



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 92

Docket No. FWS–R7–MB–2019–0005; FXMB12610700000-190-FF07M01000]

RIN 1018–BD07

Migratory Bird Subsistence Harvest in Alaska; Harvest Regulations for Migratory Birds in Alaska During the 2019 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, are adopting as a final rule an interim rule that went into effect on April 2, 2019, and established migratory bird subsistence harvest regulations in Alaska for the 2019 season. These regulations allow for the continuation of customary and traditional subsistence uses of migratory birds in Alaska and prescribe regional information on when and where the harvesting of birds may occur. The rulemaking is necessary because the regulations governing the subsistence harvest of migratory birds in Alaska are subject to annual review. Therefore, for the reasons given in the interim rule and in

this document, we are adopting the interim rule as a final rule without change.

DATES: The effective date for the interim rule that published April 3, 2019, at 84 FR 12946, is affirmed as April 2, 2019.

ADDRESSES: Documents pertaining to this rulemaking action are available on the Internet at the Federal eRulemaking Portal: <http://www.regulations.gov> at Docket No. FWS–R7–MB–2019–0005.

FOR FURTHER INFORMATION CONTACT: Eric J. Taylor, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Mail Stop 201, Anchorage, AK 99503; (907) 786–3446.

SUPPLEMENTARY INFORMATION:

Background

On April 3, 2019, we, the U.S. Fish and Wildlife Service, published an interim rule in the *Federal Register* (84 FR 12946). The interim rule set forth regulations in title 50 of the Code of Federal Regulations (CFR) in part 92 pertaining to the take of migratory birds in Alaska for subsistence uses during the spring and summer of 2019. These regulations also set forth a list of migratory bird season openings and closures in Alaska by region. The interim rule was effective April 2, 2019, and we solicited public comments on it until May 3, 2019. In this document, we address the comments received.

This rulemaking is necessary because, by law, the migratory bird harvest season is

closed unless opened by the Secretary of the Interior, and the regulations governing subsistence harvest of migratory birds in Alaska are subject to public review and annual approval. We derive our authority to issue these regulations from the Migratory Bird Treaty Act of 1918 (MBTA), at 16 U.S.C. 712(1), which authorizes the Secretary of the Interior, in accordance with the treaties with Canada, Mexico, Japan, and Russia, to issue regulations to ensure that “the taking of migratory birds and the collection of their eggs, by the indigenous inhabitants of the State of Alaska, shall be permitted for their own nutritional and other essential needs, as determined by the Secretary of the Interior, during seasons established so as to provide for the preservation and maintenance of stocks of migratory birds.” Per the MBTA, the normal season for the subsistence harvest of migratory birds in Alaska begins on April 2 each year.

Interim Rule

To meet the April 2 opening date for the 2019 season for Alaska subsistence harvest of migratory game birds, we published an interim rule. We were not able to publish a proposed rule due to unforeseen time constraints and publishing an interim rule allowed us to respect the subsistence harvest of many rural Alaskans for their cultural or religious exercise, sustenance, and/or collection of materials for cultural use (e.g., handicrafts). We regret any confusion that publishing an interim rule may have caused.

The Alaska subsistence harvest regulations, which are set forth in 50 CFR part 92, subpart D, have generally been similar the past several years, and with no significant controversy from the public. The provisions for 50 CFR part 92, subpart D, in the April 3, 2019, interim rule are the same as those set forth in our March 30, 2018, final rule (83 FR

13684). These regulations were developed under a co-management process involving the Service, the Alaska Department of Fish and Game (ADF&G), and Alaska Native representatives.

Conservation Issues

We have monitored subsistence harvest for more than 25 years through the use of household surveys in the most heavily used subsistence harvest areas, such as the Yukon–Kuskokwim Delta. Based on our monitoring of the migratory bird species and populations taken for subsistence, we find that this rule will provide for the preservation and maintenance of migratory bird stocks as required by the MBTA. Moreover, Alaska migratory bird subsistence harvest rates have continued to decline since the inception of the subsistence-harvest program, reducing concerns about the program’s effect on the preservation and maintenance of stocks of migratory birds.

Under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 et seq.), spectacled eiders (*Somateria fischeri*) and the Alaska-breeding population of Steller’s eiders (*Polysticta stelleri*) are listed as threatened species. Their migration and breeding distribution overlap with areas where the spring and summer subsistence migratory bird harvest is open in Alaska. Both species are closed to hunting, although harvest surveys and Service documentation indicate both species are taken in several regions of Alaska.

In accordance with section 7 of the ESA, we conducted an intra-agency consultation with the Service’s Fairbanks Fish and Wildlife Field Office on the interim rule. The consultation was completed with a biological opinion that concluded the interim rule and

conservation measures are not likely to jeopardize the continued existence of Steller's and spectacled eiders or result in the destruction or adverse modification of designated critical habitat.

We have reviewed the comments submitted on the interim rule, and we confirm the finding that this rule complies with the ESA. For detailed information about efforts to ensure conservation of these species, see the April 3, 2019, interim rule (84 FR 12946). See also below in this document our response to a comment on ESA-listed eiders.

Public Comments

By the close of the comment period on the interim rule, we received three comments, only one of which raised issues within the scope of this rulemaking action.

Issue: The commenter stated that the Service could have been more explicit regarding its inability to follow the normal rulemaking process and solicit public comment prior to promulgating the interim rule. The commenter expressed the desire for the Service to revert to its usual process of publishing a proposed rule and allowing a 30-day comment period before publishing regulations.

Response: The partial government lapse in appropriations prevented the Service from publishing a proposed and final rule for the 2019 Alaska migratory bird subsistence harvest in time to meet the April 2, 2019, opening season date. To ensure that we could publish regulations in time to meet that opening date, while getting comments from the public, the Service engaged with stakeholders and reached agreement to publish an interim rule. We do not intend to use an interim rule again for this purpose, as doing so prevents modifications to

the regulations implemented in consultation with the Alaskan communities. In future Alaska migratory bird subsistence harvest rulemaking actions, we expect to have a proposed rule prepared earlier in the process to ensure that we can have a final rule published in time to meet the April 2 opening date for the season.

Issue: The commenter expressed concern about the current system of gathering information about the effects of the subsistence harvest by sending household surveys to the area that uses the subsistence harvest the most. The commenter suggested that we should consider instituting a survey at the purchase of a hunting or fishing license or driver's license, similar to the process used for purchasing a Federal duck stamp, in an effort to get a more complete count of subsistence harvest effects.

Response: In collaboration with the ADF&G, the Service conducts an annual migratory bird subsistence harvest survey. The migratory bird subsistence harvest survey objectives, design, implementation, analyses, and reporting were revised after completion of a 4-year contract with Colorado State University.¹ On their website, ADF&G provides specific information on program overview, harvest and local knowledge, research, annual harvest estimates, outreach and communication, and annual survey methods:

<http://www.adfg.alaska.gov/index.cfm?adfg=subsistence.AMBCC>.

Issue: The commenter stated that some spectacled eiders and Steller's eiders, which

¹ T. Luke George, D. Otis and P. Doherty. 2015. Review and Revision of the Alaska Migratory Bird Council Subsistence Harvest Survey. Department of Fish, Wildlife, and Conservation Biology, Colorado State University Fort Collins, CO 80523:
http://www.adfg.alaska.gov/static/home/subsistence/pdfs/05_Survey_Review%20II_2014-2018.pdf

are protected under the ESA, are harvested during the subsistence harvest season and it is important for the Service to engage in wider hunter education on the threatened nature of these species and how to identify these birds prior to harvest, in order to decrease the impact upon these delicate populations. The commenter further stated that the Service must balance its obligations to allow for subsistence harvest and its obligations under the MBTA and the ESA and that increasing harvest inspections in the areas surrounding the breeding habitats of these birds would increase compliance.

Response: The Service appreciates the comments addressing protection of threatened spectacled and Steller's eiders concurrent with allowing the customary and traditional spring/summer subsistence harvest of migratory birds in Alaska. On March 22, 2019, the Service published the Biological Opinion for Migratory Subsistence Harvest: Hunting Regulations for the Spring/Summer Harvest. The Service believes the effectiveness of the migratory bird hunting regulations will be ensured by compliance checks by the Service's Office of Law Enforcement and by working to develop stewardship and voluntary efforts by hunters. In addition, the Service will continue biological monitoring to gather data critical to managers tasked with making informed management decisions. In addition to the regulations, conservation measures will be implemented to:

1. Verify compliance with migratory bird hunting regulations, including regulations prohibiting the use of lead shot for hunting waterfowl;
2. Enhance a culture of conservation through continued education of hunters; and
3. Continue to gather data on listed eiders that enable more informed management decisions. A copy of the Biological Opinion and the administrative record of this consultation

is available at <http://www.regulations.gov> in Docket No. FWS–R7–MB–2019–0005 and from the U.S. Fish and Wildlife Service, Fairbanks Fish and Wildlife Field Office, 101 12th Avenue, Room 110, Fairbanks, Alaska 99701.

Finally, the Service published and mailed 2,000 copies of the 2019 Alaska Subsistence Spring/Summer Migratory Bird Harvest booklets to Federal, State, borough, Alaska Native, and other partner offices in all regions containing eligible areas and villages. On page 15 of the 2019 regulations booklet, the Service states, “Protect our Steller’s and Spectacled Eiders—Don’t Shoot Them!” and includes pictures of both Steller’s and spectacled eiders sitting on water and flying and their names translated in Alaska Native languages. The Service commits to continuing the outreach, education, and communication programs that were developed, and are continually modified, by the Service and its partners.

Required Determinations

We hereby affirm our responses to the following determinations required of the Federal rulemaking process as published in the April 3, 2019, interim rule (84 FR 12946):

- Executive Orders 12630, 12866, 12988, 13132, 13175, 13211, 13563, and 13771
- Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 601 et seq. and 804(2))
- Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)
- Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)
- National Environmental Policy Act (42 U.S.C. 4321 et seq.)
- Government-to-Government Relations with Native American Tribal Governments (59

FR 22951, and 512 DM 2)

List of Subjects in 50 CFR Part 92

Hunting, Treaties, Wildlife.

Affirmation of Interim Rule

Accordingly, the Department of the Interior affirms as a final rule, without change, the interim rule amending 50 CFR part 92 that was published at 84 FR 12946 on April 3, 2019.

Authority: 16 U.S.C. 703–712.

Dated: July 19, 2019.

Karen Budd-Falen,

Deputy Solicitor for Parks and Wildlife,

Exercising the Authority of the Assistant Secretary for Fish and Wildlife and Parks.

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